



Consideration of Comments for the Forest Order Closing Areas Near Beattie Gulch Trailhead and McConnell Fishing Access

Comment Period

The 60-day comment period for the proposed Beattie Gulch Trailhead and McConnell Fishing Access Closure began on June 24, 2020. The Forest Service provided a second advance notice and re-opened the public comment period for an additional 60 days from January 13, 2021, through March 18th, 2021. The extended public comment period served to correct the mailing address for comments.

Parties Responding to Comment Period

The forest received seven comments, which were a combination of individuals, organizations, and agencies. The comments can be summed up in two main topics: extent of the closure and perceived safety and legal requirements under various acts – National Environmental Policy Act, National Historic Preservation Act, Administrative Procedure Act, Endangered Species Act, and others. The comments all referenced Beattie Gulch. There were no comments on the McConnell Fishing Access proposed closure.

Extent of the Closure and Perceived Safety

Since 2016, a temporary closure order covered Beattie Gulch. Alternatives for the Beattie Gulch closure were reviewed in 2015, with hunting related partners, tribes, and neighbors prior to the implementation of the temporary closure.

In 2019, the John Dingell Jr. Conservation, Management and Recreation Act requires all federal land management agencies to provide public notice and comment before issuing a hunting, fishing, or recreational shooting order. The Dingell Act also stipulates in Sec. 4103(a)(2) that any area designated for a shooting closure be the smallest area that is required for public safety, administration, or compliance with applicable laws.

The final Beattie Gulch shooting closure of 18 acres aligns with the existing Code of Federal Regulations, 36 CFR 261.10(d), closures for discharge of firearms within 150 yards of an occupied space or in any manner or place whereby any person or property is exposed to injury or damage because of such discharge. The forest decided on the final closure area based on numerous factors, including an existing Memorandum of Agreement with seven tribes that includes frequent hunt coordination calls and additional public and hunter education.

Several comments received during the public comment periods focused on making shooting safe.

Several comments on the proposed closure focused on several aspects of safety. Recreation, including hunting, on National Forest System lands come with risks, whether hiking, riding a motorcycle, camping, or shooting. There is also inherent risk living adjacent to National Forest System lands. The purpose of the closures is to help increase the level of safety for the public at each site. The Forest Service cannot guarantee a safe experience for those pursuing outdoor activities. The ultimate safe behavior rests with the public who use public lands and/or live nearby.

Legal Requirements

Several comments referenced the Interagency Bison Management Plan. The shooting closures do not revolve around bison management solely. Bison, elk, and mule deer are hunted in this area, although the primary shooting occurring at Beattie Gulch is related to bison hunting. The closure orders prohibit discharging a firearm, air rifle or gas gun. The closure orders help to increase public safety regardless of why the shooting is occurring or what species is being hunted. Even if bison management changes and bison are further distributed across the landscape, this closure is necessary and will continue.

The Forest Service has complied with the Endangered Species Act and National Historic Preservation Act. The Forest Service has engaged with the affected tribes and gained support or understanding of the need for these closures.

The Forest Service has determined these prohibitions, issued pursuant to 36 CFR part 261, fall under the Code of Federal Regulations, 36 CFR 220.6(d)(1). This categorical exclusion does not require a project or case file or a decision memo.

Table 1: Parties Who Responded

Brad Bichler
Shana Drimal, Wildlife Program Associate, Greater Yellowstone Coalition
John Harrison, Confederated Salish and Kootenai Tribes
Mark Deleray, Montana Fish Wildlife & Parks - Region 3 Supervisor
Neil Thagard, Director - Wildlife Division Nez Perce Tribe
Sue Oliver
Jared Pettinato, The Pettinato Firm

Table 2: Comment Analysis & Response

ISSUE/CONCERN	RESPONSE
SHOOTING CLOSURE AREA	
<p>#1. Additional Shooting Closures:</p> <p><i>Two commenters suggested the Forest Service should consider creating larger closures areas or additional closure areas, for the purpose of creating additional clean zones and the regulation of the bison hunt.</i></p>	<p>This proposal is focused on Beattie and McConnell and is not considering additional Jardine or Travertine Road closures.</p> <p>The Dingell Act requires the agency to “designate the smallest area for the least amount of time that is required for public safety, administration, or compliance with applicable laws.”</p> <p>The Forest Service manages forests and grasslands, but states regulate hunting seasons, tags for specific species, and hunting licenses.</p> <p>Refer to response number 9, Safety for additional context.</p>
<p>#2. Closure Area:</p> <p><i>Commenter sought to confirm the proposal and clarify they would not support a proposal that included the expansion of the existing closed area.</i></p>	<p>Proposed closures do not extend past any areas that were previously agreed upon. These proposals only capture the McConnell Fishing Access and Beattie Gulch closures issued annually since November 2016 and makes them permanent with a five-year review.</p>
<p>#3. 150 Yard Clean Zone:</p> <p><i>Commenter suggest that the area is too small and that existing Code of Federal Regulations (CFR) that limit the discharge of firearms within 150 yards to be inadequate.</i></p>	<p>Shooting closures are only one piece of managing public safety. Other avenues include public education, tribal agreements, and increased coordination. This closure is intended to increase safety combined with the above listed measures and 36 CFR (Code of Federal Regulations) 261.10(d)(1), Subpart A, prohibiting discharge of a firearm within 150 yards of a residence, building, campsite, developed recreation site, or occupied area.</p> <p>The Dingell Act requires the agency to “designate the smallest area for the least amount of time that is required for</p>

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	public safety, administration, or compliance with applicable laws.” This closure meets those requirements.
#4. Requested Comments: <i>Commenter suggests the Federal Register Notice, press release and documents are not clear.</i>	The Dingell Act requires this public comment period, even when issuing temporary or permanent closures. The objective here is to follow the Dingell Act requirements for those closures we already had in place. The documents were intended to explain the closures and procedures needed as part of the process we are required to follow.
#5. Closure Area Calculation: <i>Commenter suggests the Forest Service’s description does not calculate the closure areas accurately and does not account for all closed acres.</i>	The area around the Beattie Gulch Trailhead is already closed under 36 CFR (Code of Federal Regulations) 261.10(d)(1) - <i>Discharging a firearm or any other implement capable of taking human life, causing injury, or damaging property as follows:</i> <i>(1) In or within 150 yards of a residence, building, campsite, developed recreation site or occupied area.</i> This accounts for the “missing nine acres.”
#6. Maps: <i>Commenter suggests the maps accompanying the justification are inadequate for the public to understand the proposed closure’s locations.</i>	The maps provided are those that would be included in the official closure order. The maps show private lands immediately adjacent to the proposed closure and are used to delineate the shooting closure, not demonstrate proximity of residences.
VEHICLE CONGESTION	
#7: Traffic: <i>Commenter suggests that the bison hunt is causing traffic congestion.</i>	This comment is not relevant to the Beattie Gulch and McConnell shooting closures being considered because the Dingell Act process is specific to shooting and not the effects of traffic created by associated activities.
HEALTH AND SAFETY	
#8. Carcass Remains: <i>Commenter states that remains create potential for conflicts with grizzly bears, lead poisoning of scavengers, negative effects on area aesthetics, and other negative impacts to nearby residents and businesses.</i>	<p>Much of this comment is not relevant to the Beattie Gulch and McConnell shooting closure being considered.</p> <p>There is ongoing work with Interagency Bison Management Plan partners to help address this concern.</p>

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<p>Gut Piles: <i>Commenter states that “the Gallatin National Forest make the bison shooters ...clean up their mess before they leave.”</i></p>	<p>Gut piles are the result of hunting, but the closure is focused on shooting and not hunter practices.</p>
<p>#9. Safety: <i>Commenter states that the closures do not adequately protect the public from the ordinary dangers of hunting.</i></p>	<p>Shooting closures are only one piece of helping to increase public safety. Other tools are public education, tribal agreements, and increased coordination. This closure is intended to help increase safety combined with the above listed measures, while providing access that facilitates multiple uses of the National Forest System lands. The Dingell Act (Sec. 4102(a)) stipulates that “Federal land shall be open to hunting, fishing, and recreational shooting, in accordance with applicable law, ...”</p> <p>Section 4103 (a)(2) of the Dingell Act requires that the appropriate Secretary designate “the smallest area for the least amount of time that is required for public safety, administration, or compliance with applicable laws.” The Forest Service met the intent of “required for public safety” through a combination of actions, including education, agreements, and coordination with tribes, Montana Fish, Wildlife and Parks, and the National Park Service.</p>
<p>#10. Effectiveness of Closure: <i>Commenter states that the closures proposed by the Forest Service will not make the hunting of bison safe.</i></p> <p><i>The commenter also suggests the conversion of temporary closures to permanent closures only reduces administrative burden.</i></p>	<p>The temporary orders have been used for five years. Conversion of the orders from temporary to permanent demonstrates the agency’s long-term intent to meet the statutorily procedure on the landscape required by the Dingell Act. Annual closures do not provide for education, investment or emphasis when communicating with the public about this choice.</p> <p>Additionally, the Dingell Act requires the Forest Service to adhere to certain procedural requirements to issue temporary or permanent shooting closures.</p>
<p>#11. Contaminants: <i>Commenter suggests that additional studies on toxic waste,</i></p>	<p>This comment is not relevant to the Beattie Gulch and McConnell shooting closures.</p>

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<i>associated water contaminants or airborne bacteria are necessary associated with hunting.</i>	
LAW, REGULATION, POLICY	
<p>#12. Justification: <i>Commenter states, “the Justification identifies no countervailing interest that qualifies as “administration” or “compliance with applicable laws,” and until it does, the Dingell Act gives it no choice but to implement the public safety direction Congress assigned by closing all of Beattie Gulch.”</i></p>	<p>This action is specific to requirements contained in the John D. Dingell, Jr. Conservation, Management, and Recreation Act (Public Law No. 116-9, Title IV) governing the closure of National Forest System lands to hunting, fishing, or recreational shooting. The action also addresses Forest Service requirements to implement such a closure found in Forest Service Handbook 5309.11 – Law Enforcement Handbook, Chapter 30 – Violations, Section 34 – Closure of National Forest System Lands to Hunting, Fishing, or Recreational Shooting. The closure is not intended to evaluate the positives or negatives of hunting in general, hunting of bison, or other related effects of hunting in the Beattie Gulch area. The objective of this action is to implement the statutory requirements for providing public notice and comment before permanently closing an area of National Forest System lands to hunting, fishing, or recreational shooting through issuance of a forest order.</p>
<p>#13. Tribal Treaty Rights: <i>Commenter requests; “To the extent that the Forest Service contends that particular treaties qualify as “applicable law,” then the Dingell Act, NEPA, and the APA each separately requires the Forest Service to identify those treaties, to explain why they require this particular action, and to demonstrate that no other action would allow the agency to accomplish the duties that the particular treaties assign.”</i></p>	<p>The tribes were contacted by the District Ranger prior to and during the comment period, are aware of the proposed closures, and in some instances provided support for the closure.</p> <p>The action is narrowly focused to convert a short-term temporary closure to a permanent closure using the Dingell Act processes. The forest has worked with interested tribes on this issue since 2016.</p>
<p>#14. Alternative Closures: <i>Comments suggests that the</i></p>	<p>Alternatives were reviewed through the Interagency Bison Management Partners and other treaty tribes in 2015 and</p>

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<p><i>Forest Service has not considered alternatives to the proposed closure.</i></p>	<p>2016, to determine the extent necessary for the Beattie Gulch closure.</p> <p>Since 2016, the Gardiner Ranger District and the Custer Gallatin National Forest had a long-term goal of managing recreational shooting while providing for public safety.</p> <p>The forest led several discussions over the years about whether to conduct a National Environmental Policy Act analysis and the appropriate level of the analysis. After thoughtful discussion, the forest determined the proposed closures fell under 36 CFR (Code of Federal Regulations) 220.6(d)(1), <i>Orders issued pursuant to 36 CFR part 261 – Prohibitions to provide short-term resource protection or to protect public health and safety</i> for the following reasons:</p> <ul style="list-style-type: none"> • The permanent closure to recreational shooting is an administrative action, and no ground disturbing actions or activities will be required to put the closure into effect, • The permanent closure would not compel any direct action or inaction and would result in no tangible or perceptible effects on the environment, and • There will be no environmental effects as a part of the administrative action that can be meaningfully evaluated (36 C.F.R. § 220.4(a)). <p>For these reasons, the proposed permanent closure order is not subject to the development of alternatives.</p> <p>As required by the John D. Dingell Act, the forest published a Notice of Intent for 60 calendar days in the Federal Register and on the Forest Service website.</p> <p>The Dingell Act does not require analysis of alternatives but does require the inclusion of the smallest area of National Forest System land necessary to meet its purpose.</p>
<p>#15. Closure Decision: <i>Commenter states, the</i></p>	<p>This comment is not relevant to the Beattie Gulch and McConnell shooting closures being considered.</p>

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<i>Administrative Procedure Act does not exempt this decision from judicial review.</i>	
#16. NEPA ANALYSIS: <i>Commenter suggests the level of National Environmental Policy Act analysis is not disclosed.</i>	<p>See response #15. In addition, the Forest Service has determined this action falls under 36 CFR (Code of Federal Regulations) 220.6(d)(1). <i>Orders issued pursuant to 36 CFR part 261 – Prohibitions to provide short-term resource protection or to protect public health and safety.</i></p> <p>This activity is further excluded from National Environmental Policy Act analysis in an Environmental Impact Statement or an Environmental Assessment and does not require a project or case file or a decision memo.</p>
#17. Connected Action: <i>Commenter suggests this proposal should be considered with another Agencies National Environmental Policy Act efforts.</i>	<p>This closure would occur independent from any (Interagency Bison Management Partners) management actions. Therefore, it is not a connected action. This closure is a year-round shooting closure. The Forest Service has determined this action falls under 36 CFR (Code of Federal Regulations) 220.6(d)(1), Orders issued pursuant to 36 CFR (Code of Federal Regulations) part 261 – Prohibitions to provide short-term resource protection or to protect public health and safety. This categorical exclusion does not require a project or case file or a decision memo.</p>
#18. ESA: <i>Commenter states that Endangered Species Act consultation with the Fish and Wildlife Service is necessary.</i>	<p>This action is specific to shooting regulations and the Forest has determined that the action would have “No Effect” on listed Threatened and Endangered species in accordance with the Endangered Species Act (Hemenway Wildlife Report). The Forest Service has determined this action falls under 36 CFR (Code of Federal Regulations) 220.6(d)(1), Orders issued pursuant to 36 CFR (Code of Federal Regulations) part 261 – Prohibitions to provide short-term resource protection or to protect public health and safety. This categorical exclusion does not require a project or case file or a decision memo because there are no extraordinary circumstances.</p>
#19. NHPA: <i>Commenter states that a different</i>	<p>The Forest Service is not relying on consultation completed under the Interagency Bison Management Partners. The</p>

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<i>decision, the Interagency Bison Management Partners, violated the National Historic Preservation Act and reliance on that decision would not satisfy the Forest Service's obligations under the National Historic Preservation Act.</i>	Forest Service has consulted with the affected tribes on the issue of these closures.

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